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ORIGINAL
FILED

JUL 01 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Attorneys for Plaintiffs

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

EMC

PAUL BENSI, BART FLORENCE, JERRY
KALMAR, and LYLE SETTER, in
their capacities as Trustees of the
STATIONARY ENGINEERS LOCAL 39
PENSION TRUST FUND,

Plaintiffs,

v.

AOS OPERATING COMPANY, INC., a New
Hampshire Corporation, formerly known as
and/or doing business as AQUARION
OPERATING SERVICES COMPANY;
UNITED WATER RESOURCES, INC., doing
business as UNITED WATER, a New Jersey
Corporation,

Defendants.

CV No 08

3166

COMPLAINT FOR AUDIT, BREACH
OF CONTRACT, DAMAGES, AND
INJUNCTION (ERISA 29 U.S.C. §1001,
et seq., 29 U.S.C. §185)

Plaintiffs complain of Defendants, and for cause of action allege:

JURISDICTION AND INTRADISTRICT ASSIGNMENT

I.

This action arises under and is brought pursuant to section 502 of the Employee Retirement
Income Security Act, as amended (ERISA) (29 U.S.C. § 1132), and section 301 of the Labor

1 Management Relations Act (LMRA) (29 U.S.C. § 185). Venue properly lies in this district court
 2 since contributions were due and payable in the City and County of San Francisco and are payable
 3 in County of Alameda. Therefore, intradistrict venue is proper.

4 PARTIES

5 II.

6 Plaintiffs Paul Bensi, Bart Florence, Jerry Kalmar, and Lyle Setter were and are Trustees
 7 and together comprise the Board of Trustees of the Plaintiff Stationary Engineers Local 39 Pension
 8 Trust Fund ("Trust Fund"). At all times material herein, the above-named Trust Fund was, and
 9 now is, an employee benefit plan created by a written Trust Agreement subject to and pursuant to
 10 section 302 of the Labor Management Relations Act (29 U.S.C. § 186), and a multi-employer
 11 employee benefit plan within the meaning of sections 3, 4 and 502 of ERISA (29 U.S.C. §§ 1002,
 12 1003 and 1132). The above-named Trust Fund is administered by a Board of Trustees which may
 13 bring this action in the name of the Trust Fund pursuant to the express provisions of the Pension
 14 Trust Agreement. The Trust Fund and its respective Board of Trustees shall hereinafter be
 15 designated collectively as "Plaintiffs".

16 III.

17 At all times material herein, AOS OPERATING COMPANY, INC., formerly known as
 18 and/or doing business as AQUARION OPERATING SERVICES COMPANY (hereinafter
 19 referred to as "Aquarion"), has been an employer within the meaning of section 3(5) and section
 20 515 of ERISA (29 U.S.C. §§ 1002(5), 1145) and an employer in an industry affecting commerce
 21 within the meaning of section 301 of the LMRA (29 U.S.C. § 185).

22 IV.

23 Plaintiffs are informed and believe and on that basis allege Aquarion merged with UNITED
 24 WATER (hereinafter referred to as "United" in 2007. At all time material herein, United has been
 25 an employer within the meaning of section 3(5) and section 515 of ERISA (29 U.S.C. §§ 1002(5),
 26 1145) and an employer in an industry affecting commerce within the meaning of section 301 of the
 27 LMRA (29 U.S.C. § 185).

28 ///

ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF

V.

At all relevant times, Plaintiffs are informed and believe and on that basis alleged that Defendants Acquarion and United are alter-egos, interrelated, overlapping, under common management, control, ownership, and operation, successors, or a single employer as contemplated in the applicable labor agreements and therefore, Defendants were and are signatory and bound to a written Collective Bargaining Agreement with the International Union of Operating Engineers, Stationary Local No. 39 (hereinafter "Union"), a labor organization within the meaning of section 301 of the Labor Management Relations Act (29 U.S.C. § 185). By virtue of signing the Collective Bargaining Agreement (hereinafter "CBA"), Defendant Acquarion became subject to all its terms and conditions as well as the terms and conditions of the Trust Agreement. By virtue of becoming bound to the CBA, Defendant United became subject to all its terms and conditions as well as the terms and conditions of the Trust Agreement.

VI.

The Trust Agreement provides for prompt payment of all employer contributions to the Trust Fund and for the payment of interest and liquidated damages on all delinquent contributions, attorneys' fees, and other collection costs, including audit costs and for the audit of the signatory employer or employers' books and records in order to permit the Plaintiffs to ascertain whether all fringe benefit contributions have been timely paid as required by the applicable labor agreements and law.

FIRST CLAIM FOR RELIEF
(AUDIT)

VII.

The Board of Trustees has, as one of its purposes, the obligation to ensure that contributions required to be made to the Trust Fund pursuant to collective bargaining agreement are fully and correctly made. The purpose of the Trust Fund is to provide pension benefits for Stationary Engineers on whose behalf contributions are made, which benefits are supported by such contributions, and to ensure that employers who are signatories to the collective bargaining

1 agreements referred to herein comply with the terms of said agreements with respect to payments
 2 of said contributions to the Fund. The Fund maintains its office in the County of Alameda, and all
 3 such contributions were required to be made in the City and County of San Francisco and are
 4 required to be made in County of Alameda.

5 VIII.

6 The Trust Agreement establishing the Trust Fund, provides that:

7 The Board may require the Employers, any Signatory Association, any
 8 Individual Employer . . . under the Plan to submit to it any information, data,
 9 reports, or documents reasonably relevant to and suitable for the purposes of
 10 such administration The parties agree that they will use their best
 11 efforts to secure compliance with any reasonable request of the Board for
 12 any such information, data, report or documents. Upon request in writing
 13 form the Board, any Individual Employer shall permit a certified public
 14 accountant selected by the Board to enter upon the premises of such
 15 Individual Employer during business hours, at a reasonable time or times,
 16 and to examine and copy such books, records, papers or reports of such
 17 Individual Employer as may be necessary to determine whether the
 18 Individual Employer is making full and prompt payment of all sums
 19 required to be paid by him or it to the Fund.

14 IX.

15 Plaintiffs cannot determine whether or not Defendants have made prompt and correct
 16 payment of all Fund contributions, and as a consequence, good cause appearing therefore,
 17 communications have been directed to Defendants by representatives of Plaintiffs demanding that
 18 Defendants submit to an audit pursuant to the respective collective bargaining agreements and
 19 Trust Agreement for the period November 1, 2004 to the present. A copy of demand letters
 20 from Plaintiffs to Defendants dated January 18, 2007, February 2, 2007, March 29, 2007,
 21 June 27, 2007, July 12, 2007, and August 15, 2007 are attached hereto as Exhibit A and made a
 22 part hereof.

23 X.

24 Defendants have failed, refused or neglected to allow the audit as requested or inspection of
 25 their books, records, papers, or reports in accordance with the provisions of the Trust Agreement.
 26 As a result of Defendants' refusal to submit to a full and complete audit, Plaintiffs are unable to
 27 ascertain the amount of damages, if any, suffered by the Trust Fund. Plaintiffs have no adequate
 28 remedy at law, and the individual Stationary Engineers who are the participants and beneficiaries

1 of the Trust Fund, particularly the employees of Defendants, are damaged thereby and also have no
2 adequate remedy at law.

3 XI.

4 Plaintiffs are intended third party beneficiaries of the collective bargaining agreements, but
5 Trust Fund contribution delinquencies are excluded from the arbitration provision of said
6 agreements.

7 XII.

8 Plaintiffs have complied with all conditions on their part to be performed under the terms of
9 the applicable agreements.

10 XIII.

11 Plaintiffs are entitled to reasonable attorneys' fees, interest, liquidated damages and other
12 reasonable expenses incurred in connection with this matter due to Defendants' failure to allow the
13 audit or refusal to pay all fringe benefit contributions due and owing pursuant to the terms of the
14 applicable collective bargaining agreements, Trust Agreement, and ERISA section 502(g)(2) (29
15 U.S.C. § 1132(g)(2).

16 **SECOND CLAIM FOR RELIEF**
17 **(BREACH OF CONTRACT)**

18 XIV.

19 Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

20 XV.

21 Pursuant to the written agreements establishing the Trust Fund, Defendants have failed,
22 neglected or refused to allow Plaintiffs access to the records requested and needed to determine the
23 exact amount of fringe benefit contributions owed to the Trust Fund. As a result, Defendants are in
24 breach of the agreements.

25 **THIRD CLAIM FOR RELIEF**
26 **(INJUNCTION)**

27 XXII.

28 Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

XXIII.

Unless enjoined by this Court, Defendants will continue to fail, neglect, or to submit to an audit of books and records and by the Trust Fund and thereby cause Plaintiffs irreparable harm for which there exists no adequate remedy at law.

WHEREFORE, Plaintiffs pray judgment against Defendants as follows:

1. That Defendants be compelled to forthwith submit to a full audit by auditors selected by the Trust Fund at the premises of the Defendants within jurisdiction of the applicable CBA or at the premises of the Trust Fund during business hours, at a reasonable time or times, and to allow said auditors to examine and copy such books, records, papers, reports of Defendants relevant to the enforcement of the collective bargaining agreements or the Trust Agreement, including but not limited to the following:

- a. Collective bargaining agreements, for the entire testing period, covering the employees who are reported to the Trust;
- b. Monthly transmittals to the Trust showing the names reported for benefits;
- c. Payroll registers or other documents which show wages paid and hours worked by month (preferably) or week;
- d. Time cards for the most recent full quarter of the current year;
- e. California state quarterly payroll tax returns (DE-6's);
- f. Detailed documentation of the job classifications of employees NOT reported to the Trust;
- g. Monthly transmittals to other Trust Funds;
- h. Worker's compensation monthly or quarterly reports, as applicable;
- i. Seniority lists covering the entire testing period;
- j. 1099's; and
- k. Cash disbursement journals.

2. That Defendants be ordered to pay contributions in an amount to be determined at trial, plus interest thereon;

3. That Defendants be ordered to pay actual damages according to proof;

1 4. That this Court issue an injunction compelling Defendants to forthwith cease their
2 refusal to submit to an audit of their books, records, papers and reports as required by the
3 agreements to which they are bound;

4 5. That upon completion of the audit, Defendants be decreed to pay over to Plaintiffs
5 such sums as shall be ascertained to be due from Defendants and interest on said sums;

6 6. That this Court issue an Order directing and permanently enjoining Defendants to
7 timely submit to Plaintiff Trust Fund, all reports and contributions due and owing by Defendants
8 plus interest, liquidated damages, attorneys' fees, and costs as provided in ERISA sections
9 502(a)(3) and (g)(2) (29 U.S.C. § 1132(a)(3), (g)(2));

10 7. That this Court issue an Order permanently enjoining Defendants for so long as they
11 remain obligated to contribute to Plaintiffs Trust Fund, from failing, neglecting, or refusing to
12 timely submit required monthly contributions reports and payments as required by the terms of the
13 collective bargaining agreements, Trust Agreements and ERISA sections 502(a)(3) and (g)(2), (29
14 U.S.C. § 1132(a)(3), (g)(2));

15 8. That Defendants be ordered to pay attorney's fees;

16 9. That Defendants be ordered to pay costs of suit herein;

17 10. That this Court grant such further relief as this Court deems just and proper; and

18 11. That this Court retain jurisdiction of this matter to enforce the Order compelling an
19 Audit and payment of all amount found due and owing.

20 Dated: June 27, 2008

21 WEINBERG, ROGER & ROSENFELD
22 A Professional Corporation

23 By: Linda Baldwin Jones
24 LINDA BALDWIN JONES
25 ANDREA LAIACONA
26 Attorneys for Plaintiffs

27 118159/485049

January 18, 2007

Ms. Pricilla Adams
Aquarium Operating Services
15 Dartmouth Drive, Suite 300
Auburn, NH

Re: Stationary Engineers Local 39 Trust Funds – Payroll Compliance Testing
Employer Number: 00002-1445-001

Dear Ms. Adams:

We are writing to inform you that we had two different auditors go through the documentation you sent to our office and there are still some items missing that we will need in order to complete our audit.

Please send the following documentation to our office by no later than February 1, 2007 so that we may complete the testing in a timely manner:

1. Transmittals (monthly contribution reports) to the Trust for the following periods:

November 2004 through June 2006

2. Payroll registers or other documents which show wages paid/worked and hours paid/worked by month (preferably) or week for the following periods:

November 2004 through June 2006

3. Detailed job classification documentation for employees who are not reported to the Trust (i.e. workers compensation reports, screen shot of job title or job description from human resource database, organization chart, phone lists including title, signed job applications, business cards, etc.) for the periods of:

November 1, 2004 through June 2006

4. Cash Disbursement Journals including date, payee, and check number amount for the periods of November 1, 2004 through June 2006 (this information usually comes from the accounts payable department and can be a check register, general ledger, accounts payable journal, etc... If this information is not available to send, a complete Vendor List is acceptable).

EXHIBIT A

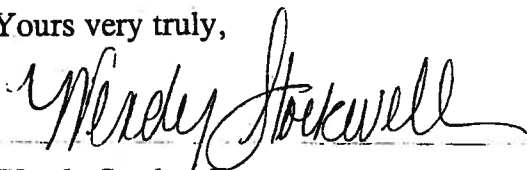
January 18, 2007
Aquarium Operating Services
Page 2

5. California quarterly payroll tax returns (DE-6's) including employee's name, social security number and gross taxable wages for the following quarters:

November –December 2004
2nd, 3rd, and 4th quarters of 2005
1st and 2nd quarters of 2006

Thank you in advance for your assistance in this matter. If you have any questions please feel free to call me.

Yours very truly,

A handwritten signature in black ink, appearing to read "Wendy Stockwell", written over a horizontal line.

Wendy Stockwell
91271\2006\Aquarium rec req.doc

February 2, 2007

Ms. Pricilla Adams
Aquarium Operating Services
15 Dartmouth Drive, Suite 300
Auburn, NH

Re: Stationary Engineers Local 39 Trust Funds – Payroll Compliance Testing
Employer Number: 00002-1445-001

Dear Ms. Adams:

We are writing to inform you that we had two different auditors go through the documentation you sent to our office and there are still some items missing that we will need in order to complete our audit.

Please send the following documentation to our office by no later than February 16, 2007 so that we may complete the testing in a timely manner:

1. Transmittals (monthly contribution reports) to the Trust for the following periods:

November 2004 through June 2006

2. Payroll registers or other documents which show wages paid/worked and hours paid/worked by month (preferably) or week for the following periods:

November 2004 through June 2006

3. Detailed job classification documentation for employees who are not reported to the Trust (i.e. workers compensation reports, screen shot of job title or job description from human resource database, organization chart, phone lists including title, signed job applications, business cards, etc.) for the periods of:

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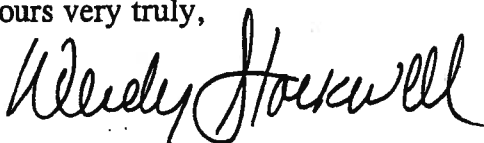
February 2, 2007
Aquarium Operating Services
Page 2

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November –December 2004
2nd, 3rd, and 4th quarters of 2005
1st and 2nd quarters of 2006

Thank you in advance for your assistance in this matter. If you have any questions please feel free to call me.

Yours very truly,

A handwritten signature in black ink, appearing to read "Wendy Stockwell". The signature is fluid and cursive, with the first name "Wendy" and last name "Stockwell" clearly distinguishable.

Wendy Stockwell
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LAD

STEWART WEINBERG
DAVID A. ROSENFELD
WILLIAM A. SOKOL
VINCENT A. HARRINGTON, JR.
W. DANIEL BOONE
BLYTHE MICKELSON
BARRY E. HINKLE
JAMES RUTKOWSKI
SANDRA RAE BENSON
CHRISTIAN L. RAISNER
JAMES J. WESSER
THEODORE FRANKLIN
ANTONIO RUIZ
MATTHEW J. GAUGER
ASHLEY K. IKEDA **
LINDA BALDWIN JONES
PATRICIA A. DAVIS
ALAN G. CROWLEY
J. FELIX DE LA TORRE
KRISTINA L. HILLMAN ***
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MANJARI CHAWLA
KRISTINA M. ZINNEN

PATRICIA M. GATES, Of Counsel
ROBERTA D. PERKINS, Of Counsel
JOHN PLOTZ, Of Counsel

** Also admitted in Arizona
** Admitted in Hawaii
*** Also admitted in Nevada

March 29, 2007

Via Facsimile and First Class Mail

Priscilla Adams
Robert Johnson
Aquarium Operating Services
15 Dartmouth Drive, Suite 300
Auburn, NH 03032-3982

Re: Stationary Engineers Local 39 Trust Funds
Payroll Compliance Testing
Employer No. 00002-1445-001

Dear Ms. Adams and Mr. Johnson:

This office represents the Stationary Engineers Local 39 Trust Funds and in that regard it has come to our attention that you have failed to submit documents necessary for the Trust Funds' audit of your books and records for the period November 1, 2004 to the present.

As a contributing employer, Aquarium Operating Services agreed to make contributions to the above referenced Trust Funds pursuant to the collective bargaining agreement and Trust Agreements. Pursuant to the Trust Agreements, the Boards of Trustees have the authority to audit the books and records of all contributing employers. Specifically, the Trust Agreements provide in pertinent part:

The Board may require the Employers, any Signatory Association, any Individual Employer, the Union, an Employee, or any other beneficiary under the Plan to submit to it any information, data, reports, or documents reasonably relevant to an d suitable for the purposes of such administration; provided, however, that the Union shall not be required to submit lists of membership. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the Board for any such information, data, report or documents. Upon request in writing from the Board, any Individual Employer shall permit a certified public accountant selected by the Board to enter upon the premises of such Individual Employer during business hours, at a reasonable time or times, and to examine and copy such books, records, papers or reports of such Individual Employer as may be necessary to determine whether the Individual Employer is making full and prompt payment of all sums required to be paid by him or it to the Fund.

March 29, 2007
Priscilla Adams
Robert Johnson
Page 2

Thus, the Trust Funds have the right to copy any books, records or papers or reports of Aquarium Operating Services necessary for the audit regardless of whether Ms. Adams believes the information the auditors are asking for is too much or whether she is too busy to deal with the audit. Moreover, referring the auditors to Mr. Johnson has further delayed the audit as he has failed to return any of the auditors' telephone calls.

Accordingly, demand is hereby made that your company submit the documents requested described in Ms. Wendy Stockwell's letters of January 8, 2007 and February 2, 2007 (attached hereto) directly to Lindquist LLP within 10 days from the date of this letter. Your failure to provide all documents requested is a breach of the Trust Agreements as well as your federal obligation to abide by the terms and conditions of the collective bargaining agreement

If the Trust Funds' auditors do not receive the requested information, it will be necessary for this office to file a civil action against Aquarium Operating Services so as to obtain an injunction to compel production of the records, together with appropriate sanctions for your failure to comply with the Trust Fund's request.

Sincerely,



Linda Baldwin Jones

LBJ/jys
opeiu 3 afl-cio(1)

Enclosures

cc: Lindquist, LLP
Trust Fund

1/452936

January 18, 2007

Ms. Pricilla Adams
Aquarium Operating Services
15 Dartmouth Drive, Suite 300
Auburn, NH

Re: Stationary Engineers Local 39 Trust Funds – Payroll Compliance Testing
Employer Number: 00002-1445-001

Dear Ms. Adams:

We are writing to inform you that we had two different auditors go through the documentation you sent to our office and there are still some items missing that we will need in order to complete our audit.

Please send the following documentation to our office by no later than February 1, 2007 so that we may complete the testing in a timely manner:

1. Transmittals (monthly contribution reports) to the Trust for the following periods:

November 2004 through June 2006

2. Payroll registers or other documents which show wages paid/worked and hours paid/worked by month (preferably) or week for the following periods:

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3. Detailed job classification documentation for employees who are not reported to the Trust (i.e. workers compensation reports, screen shot of job title or job description from human resource database, organization chart, phone lists including title, signed job applications, business cards, etc.) for the periods of:

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4. Cash Disbursement Journals including date, payee, and check number amount for the periods of November 1, 2004 through June 2006 (this information usually comes from the accounts payable department and can be a check register, general ledger, accounts payable journal, etc... If this information is not available to send, a complete Vendor List is acceptable).

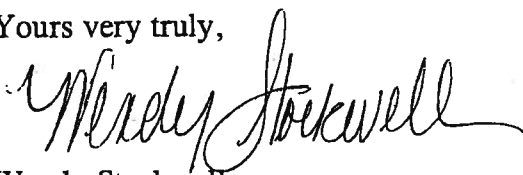
January 18, 2007
Aquarium Operating Services
Page 2

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November –December 2004
2nd, 3rd, and 4th quarters of 2005
1st and 2nd quarters of 2006

Thank you in advance for your assistance in this matter. If you have any questions please feel free to call me.

Yours very truly,

A handwritten signature in black ink, appearing to read "Wendy Stockwell". The signature is fluid and cursive, with a long horizontal stroke at the end.

Wendy Stockwell

91271\2006\Aquarium rec. req.doc

February 2, 2007

Ms. Pricilla Adams
Aquarium Operating Services
15 Dartmouth Drive, Suite 300
Auburn, NH

Re: Stationary Engineers Local 39 Trust Funds – Payroll Compliance Testing
Employer Number: 00002-1445-001

Dear Ms. Adams:

We are writing to inform you that we had two different auditors go through the documentation you sent to our office and there are still some items missing that we will need in order to complete our audit.

Please send the following documentation to our office by no later than February 16, 2007 so that we may complete the testing in a timely manner:

1. Transmittals (monthly contribution reports) to the Trust for the following periods:

November 2004 through June 2006

2. Payroll registers or other documents which show wages paid/worked and hours paid/worked by month (preferably) or week for the following periods:

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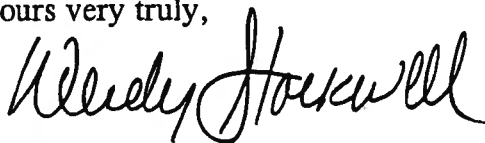
February 2, 2007
Aquarium Operating Services
Page 2

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November –December 2004
2nd, 3rd, and 4th quarters of 2005
1st and 2nd quarters of 2006

Thank you in advance for your assistance in this matter. If you have any questions please feel free to call me.

Yours very truly,

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Wendy Stockwell
91271\2006\Aquarium rec req.doc

June 27, 2007

Priscilla Adams
Aquarium Operating Services
15 Dartmouth Drive, Suite 300
Auburn, New Hampshire 03032

Re: Stationary Engineers Local 39 - Payroll Compliance Testing
Employer Number: 00002-1445-001

Dear Ms. Adams:

We are writing to request documentation necessary to complete testing of your contributions to the above-referenced Trust Funds.

Please send the following documentation to our office, attention Carol LeMaster, no later than July 11, 2007 so that we may complete the testing in a timely manner:

1. Job classification documentation for the following employees (i.e. workers compensation reports, screen shot of job title or job description from human resource database, organization chart, phone lists including title, signed job applications, business cards, etc.):

QUARTER	2006-3
<u>Name</u>	<u>Social Security Number</u>
O'Connor, L.	28-36-7359
Dummer, P.	548-78-4962
Schielke, R.	557-17-6614
Ferrini, V.	557-68-7921
Harding, P.	560-43-4533
Gallegos, C.	561-52-6560
Glass, S.	561-97-5215
Justus, J.	569-51-5323
Mark, A.	569-55-1001
Bell, C.	571-97-4151

June 27, 2007

Aquarium Operating Services

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QUARTER	2005-1
Name	<u>Social</u> <u>Security</u> <u>Number</u>
Almodovar, A.	583-28-8227
Vanoort, R.	60-71-3807
Black, E.	565-13-5777
Mercado Jr., F.	562-47-6076
Mares, R.	564-39-3987
Hause, T.	504-98-4100
Chilton, J.	554-45-6637
Hunter, J.	557-51-9003
Franklin, M.	572-13-8691
Amie, L.	573-61-4111

2. Copies of any invoices (between November 1, 2004-September 30, 2006) including name of payee, date, check number and amount, description of purchase (supplies, services, etc...) for the following payees:

Action Engine Maching
 Akers Industries, Inc.
 ALCO Engineering Division
 Anderson Bros. Electric, Inc.
 Associated Electro-Mechanics
 Atlantic Pump & Engineering
 Automated Control Sys., Inc.
 Base Technologies, Inc.
 B&J Electric Motor Repair Co.
 Boettcher Electric
 Boyle Engineering Corporation
 Brenner Fiedler & Associates
 Capital Contractors Inc
 Carter Mtn Electrical Svc, LLC
 C.N. Wood & Connecticut LLC
 Columbus Fan & Machine Corp.
 Cordes Data Systems
 CSC Corporation Service Co.

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DanDel Construction Inc.
Di Rienzo Mechanical
Energy Strategies Corporation
Fluid Dynamics, Inc
David Gaipo
Gmac Electrical Testing & Svc
Hanover Company, The
Hart Engineering Corp.
Larry Johnson
Johnny Troy's
Karen Sircle
Komiron Companies Inc.
Labconco Corporation
L.K. Goodwin Co., Inc
The Maher Corporation
NACD
OMNI
Peter J. Landi Inc.
Precision Industries, Inc.

Thank you in advance for your assistance in this matter. If you have any questions please feel free to call me.

Yours very truly,



Carol M. LeMaster

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July 12, 2007

Priscilla Adams
Aquarium Operating Services
15 Dartmouth Drive, Suite 300
Auburn, New Hampshire 03032

Re: Stationary Engineers Local 39 – Payroll Compliance Testing
Employer Number: 00002-1445-001

Dear Ms. Adams:

We are writing to follow up on our letter to you, dated June 27, 2007 requesting documentation necessary to complete testing of your contributions to the above-referenced Trust Fund.

Please send the following records to our office:

1. Job classification documentation for the following employees (i.e. workers compensation reports, screen shot of job title or job description from human resource database, organization chart, phone lists including title, signed job applications, business cards, etc.):

QUARTER	2006-3
	<u>Social</u> <u>Security</u> <u>Number</u>
<u>Name</u>	
O'Connor, L.	28-36-7359
Dummer, P.	548-78-4962
Schielke, R.	557-17-6614
Ferrini, V.	557-68-7921
Harding, P.	560-43-4533
Gallegos, C.	561-52-6560
Glass, S.	561-97-5215
Justus, J.	569-51-5323
Mark, A.	569-55-1001
Bell, C.	571-97-4151

July 12, 2007

Aquarium Operating Services

Page two

QUARTER	2005-1
<u>Name</u>	<u>Social Security Number</u>
Almodovar, A.	583-28-8227
Vanoort, R.	60-71-3807
Black, E.	565-13-5777
Mercado Jr., F.	562-47-6076
Mares, R.	564-39-3987
Hause, T.	504-98-4100
Chilton, J.	554-45-6637
Hunter, J.	557-51-9003
Franklin, M.	572-13-8691
Amie, L.	573-61-4111

2. Copies of any invoices (between November 1, 2004-September 30, 2006) including name of payee, date, check number and amount, description of purchase (supplies, services, etc...) for the following payees:

Action Engine Maching
Akers Industries, Inc.
ALCO Engineering Division
Anderson Bros. Electric, Inc.
Associated Electro-Mechanics
Atlantic Pump & Engineering
Automated Control Sys., Inc.
Base Technologies, Inc.
B&J Electric Motor Repair Co.
Boettcher Electric
Boyle Engineering Corporation
Brenner Fiedler & Associates
Capital Contractors Inc
Carter Mtn Electrical Svc, LLC
C.N. Wood & Connecticut LLC
Columbus Fan & Machine Corp.
Cordes Data Systems
CSC Corporation Service Co.

July 12, 2007

Aquarium Operating Services

Page three

DanDei Construction Inc.
Di Rienzo Mechanical
Energy Strategies Corporation
Fluid Dynamics, Inc
David Gaipo
Gmac Electrical Testing & Svc
Hanover Company, The
Hart Engineering Corp.
Larry Johnson
Johnny Troy's
Karen Sircle
Komiron Companies Inc.
Labconco Corporation
L.K. Goodwin Co., Inc
The Maher Corporation
NACD
OMNI
Peter J. Landi Inc.
Precision Industries, Inc.

If we do not receive the above-requested information by July 26, 2007 we will have no option but to refer this matter to Trust legal counsel. Thank you in advance for your cooperation in this matter. If you have any questions please feel free to call.

Yours very truly,



Carol M. LeMaster

91271\2006\Aquarium Operating Services_2nd records req.doc

STEWART WEINBERG
DAVID A. ROSENFELD
WILLIAM A. SOKOL
VINCENT A. HARRINGTON, JR.
W. DANIEL BOONE
BLYTHE MICKELSON
BARRY E. HINKLE
JAMES RUTKOWSKI
SANDRA RAE BENSON
CHRISTIAN L. RAISNER
JAMES J. WESSER
THEODORE FRANKLIN
ANTONIO RUIZ
MATTHEW J. GAUGER
ASHLEY K. IKEDA
LINDA BALDWIN JONES
PATRICIA A. DAVIS
ALAN G. CROWLEY
J. FELIX DE LA TORRE
KRISTINA L. HILLMAN
ANDREA LAIACONA
EMILY P. RICH

WEINBERG, ROGER & ROSENFIELD

A PROFESSIONAL CORPORATION

1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091
TELEPHONE 510.337.1001
FAX 510.337.1023

LORI K. AQUINO
ANNE I. YEN
NICOLE M. PHILLIPS
BRUCE A. HARLAND
CONCEPCION E. LOZANO-BATISTA
CAREN P. SENCER
LINELLE S. MOGADO
MANJARI CHAWLA
KRISTINA M. ZINNEN
JANNAH V. MANANSALA
MANUEL A. BOIGUES

PATRICIA M. GATES, Of Counsel
ROBERTA D. PERKINS, Of Counsel
JOHN PLOTZ, Of Counsel

• Also admitted in Arizona
•• Admitted in Hawaii
••• Also admitted in Nevada
•••• Also admitted in Illinois

August 15, 2007

Robert Johnson
Aquarium Operating Services
15 Dartmouth Drive, Suite 300
Auburn, NH 03032

Re: Stationary Engineers Local 39 Trust Funds – Payroll Compliance Testing
Employer Name: Aquarium Operating Services
Employer Number: 00002-1445-001

Dear Mr. Johnson:

This office represents the Stationary Engineers Local 39 Trust Funds and in that regard, it has come to our attention that Aquarium Operating Services has not responded to the Trust Funds auditors' request for additional information as per their letters of June 27, 2007 and July 12, 2007. The testing period is November 1, 2004 through the present.

As a contributing employer, Aquarium Operating Services agreed to make contributions to the above referenced Trust Funds pursuant to the collective bargaining agreement and Trust Agreements. Pursuant to the Trust Agreements, the Boards of Trustees have the authority to audit the books and records of all contributing employers and to request any information, data, report or documents. Specifically, the Trust Agreements provide in pertinent part:

The Board may require the Employers, any Signatory Association, any Individual Employer, the Union, an Employee, or any other beneficiary under the Plan to submit to it any information, data, reports, or documents reasonably relevant to and suitable for the purposes of such administration; provided, however, that the Union shall not be required to submit lists of membership. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the Board for any such information, data, report or documents. Upon request in writing from the Board, any Individual Employer shall permit a certified public accountant selected by the Board to enter upon the premises of such Individual Employer during business hours, at a reasonable time or times, and to examine and copy such books, records, papers or reports of such Individual Employer as may be necessary to determine whether the Individual Employer is making full and prompt payment of all sums required to be paid by him or it to the Fund.

August 15, 2007


Robert Johnson

Page 2

Your failure to respond is a breach of the Trust Agreements as well as your federal obligation to abide by the terms and conditions of the collective bargaining agreement. Demand is hereby made that Aquarium Operating Services provide Ms. Carol LeMaster at Lindquist, LLC with the documents requested. Please send the documents by August 28, 2007.

If Aquarium Operating Services continues fail to submit the requested records, please be advised that the Funds will take appropriate legal action to enforce their rights under the Trust Agreements and ERISA.

Sincerely,


Linda Baldwin Jones

LBJ/jys

opeiu 3 afl-cio(1)

Enclosure

cc: Trust Fund
Lindquist, LLP

1/466349

CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

PAUL BENSI, BART FLORENCE, JERRY KALMAR, and
 LYLE SETTER, in their capacities as Trustees of the
 STATIONARY ENGINEERS LOCAL 39 PENSION TRUST
 FUND

DEFENDANTS

AOS OPERATING COMPANY, INC., a New Hampshire
 Corporation, formerly known as and/or doing business as
 AQUARION OPERATING SERVICES COMPANY;
 UNITED WATER RESOURCES, INC., doing business as
 UNITED WATER, a New Jersey Corporation

(b) County of Residence of First Listed Plaintiff
 (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
 LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Linda Baldwin Jones, Bar No. 178922
 Andrea Laiacina, Bar No. 208742
 Weinberg, Roger & Rosenfeld
 1001 Marina Village Parkway, Suite 200
 Alameda, CA 94501

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 88 I	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
			<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
			<input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
			IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
			<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
			<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 29 USC Section 1132; 29 USC Section 185

Brief description of cause:

Audit, Breach of Contract, Damages and Injunction

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$

☐ CHECK YES only if demanded in complaint:
 JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
 "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

DATE
 June 27, 2008

SIGNATURE OF ATTORNEY OF RECORD

Linda Baldwin Jones

ORIGINAL

AO 440 (Rev. 03/08) Civil Summons

UNITED STATES DISTRICT COURT

for the

Northern District of California

See Attached

Plaintiff

v.

See Attached

Defendant

CV 08

3166

Civil Action No.

Summons in a Civil Action

To: See Attached

(Defendant's name)

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

Linda Baldwin Jones, Bar No. 178922

Andrea Laiacona, Bar No. 208742

Weinberg, Roger & Rosenfeld

1001 Marina Village Parkway, Suite 200

Alameda, CA 94501

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: JUL 01 2008

Richard W. Wieking

Name of clerk of court

Deputy clerk's signature

ANNA SPRINKLES

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

ATTACHMENT TO SUMMONS IN A CIVIL ACTION

PAUL BENSI, BART FLORENCE, JERRY KALMAR, and LYLE SETTER, in
their capacities as Trustees of the STATIONARY ENGINEERS LOCAL 39 PENSION
TRUST FUND,

Plaintiffs,

v.

AOS OPERATING COMPANY, INC., a New Hampshire Corporation, formerly known
as and/or doing business as AQUARION OPERATING SERVICES COMPANY;
UNITED WATER RESOURCES, INC., doing business as UNITED WATER, a New
Jersey Corporation,

Defendants.

To: AOS Operating Company, Inc., a New Hampshire Corporation, formerly known
as and/or doing business as Aquarion Operating Services Company

United Water Resources, Inc., doing business as United Water, a New Jersey
Corporation